

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gregory Haynes	Team: Team # 4	CCRB Case #: 200606103	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/10/2006 12:15 PM	Location of Incident: Washington Avenue and Gates Avenue	Precinct: 88	18 Mo. SOL 11/10/2007	EO SOL 11/10/2007	
Date/Time CV Reported Wed, 05/10/2006 7:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/10/2006 7:16 PM		
Complainant/Victim	Type	Home Address			
Witness(es)	Home Address				
Subject Officer(s)	Shield	TaxID	Command		
1. SGT Melissa Eger	01980	924351	088 PCT		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Anthony Barbee	22369	917270	088 DET		
Officer(s)	Allegation			Investigator Recommendation	
A.SGT Melissa Eger	Abuse: Sgt. Melissa Eger stopped and questioned § 87(2)(b)				

Synopsis

On May 10, 2006, at 12:15 P.M., outside of a building in the vicinity of Washington Avenue and Gates Avenue in Brooklyn, where § 87(2)(b) works as a § 87(2)(b) § 87(2)(b) was knocking on the door of the superintendent's apartment. Sgt. Melissa Eger and P. O. Anthony Barbee arrived at the location and questioned § 87(2)(b) about what he was doing (*Allegation a – Abuse of authority*). § 87(2)(b) explained that he worked in the building and the officers left the location. P. O. Barbee completed a Stop Question & Frisk report regarding this incident, which listed the address as being in the vicinity of Washington Avenue and Gates Avenue. This address differs from that provided by § 87(2)(b) § 87(2)(b) § 87(2)(b)

§ 87(2)(b) stated that prior to this incident, on an unknown date, he was stopped and searched by a group of officers that included P. O. Barbee. § 87(2)(b) stated that during that prior incident, P. O. Barbee made § 87(2)(b) do eighty pushups and waved a bag of marijuana in § 87(2)(b)'s face. § 87(2)(b) was not arrested with regards to either incident. During § 87(2)(b)'s formal CCRB interview, § 87(2)(b) was explained the process of investigation and mediation and chose to have this complaint investigated.

On November 2, 2006, this case was reassigned to the undersigned investigator because the original investigator, Investigator Janet Gooding, left the employment of the CCRB.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) has provided three statements with regards to this incident. The first was § 87(2)(b)'s intake statement on May 10, 2006 (enc. 5 A). The second was § 87(2)(b)'s initial telephone statement to the CCRB on June 6, 2006 (enc. 6 A). The third was § 87(2)(b)'s formal CCRB statement on June 16, 2006 (enc. 7 B). § 87(2)(g)

On May 10, 2006, at approximately 12:30 P.M., § 87(2)(b) was returning with some pizza and soda to § 87(2)(b) in Brooklyn, where he works as a § 87(2)(b) § 87(2)(b) knocked on the superintendent's door to gain entry into the building. P. O. Anthony Barbee, whose identity was determined by the investigation and was described by § 87(2)(b) as a white male, with brown hair, 5' 10" in height and wearing plain clothes, exited a silver Impala and ran towards § 87(2)(b) § 87(2)(b) recognized P. O. Barbee from the previous incident.

P. O. Barbee asked § 87(2)(b) why he was knocking on the door and § 87(2)(b) explained that he works at the location. P. O. Barbee responded, "Sure you work here. What do you do?" § 87(2)(b) replied that he cleans the building. At that point, P. O. Barbee referred to the previous incident when he stopped § 87(2)(b) and remarked to his partner, Sgt. Melissa Eger, whose identity was determined by the investigation and was described by § 87(2)(b) as a white female with blonde hair and 5' 7" in height, "This was the guy I stopped before." After questioning § 87(2)(b) for approximately five minutes, the officer requested his identification and wrote down some information. At about that time, § 87(2)(b)'s friends, § 87(2)(b) and § 87(2)(b) were walking down the street. The officers then "ran into their car" and left the location. § 87(2)(b) and § 87(2)(b) encouraged § 87(2)(b) to file this complaint.

Results of Investigation

Civilian Witnesses:

By § 87(2)(b)'s statement, the only two civilians who witnessed a portion of the May 10, 2006 incident were § 87(2)(b) and § 87(2)(b). However, no attempts were made to contact § 87(2)(b) or § 87(2)(b) because § 87(2)(b) did not know their last names or contact information. Moreover, by § 87(2)(b)'s own statement, Sgt. Eger and P. O. Barbee left once § 87(2)(b) and § 87(2)(b) arrived, so it is unclear how much of the incident they actually witnessed.

Officer Identification:

P. O. Anthony Barbee completed a Stop Question and Frisk Report for the stop of § 87(2)(b) on May 10, 2006 (enc. 11 A). P. O. Barbee is a white male, however, his hair is blond. The Tour 2 Roll Call for the 88th Precinct on May 10, 2006 lists P. O. Anthony Barbee as working with Sgt. Melissa Eger, who is a white female with brown hair (enc. 13 A and 13 C). The same roll call initially lists P. O. Barbee as working with P. O. Anthony Pagnotta (enc. 13 C), however, P. O. Pagnotta was exempted from this assignment because he was assigned to a Criminal Court Alert (enc. 13 I). While Sgt. Eger and P. O. Barbee do not match the hair color provided by § 87(2)(b) they do match § 87(2)(b)'s physical description that he was stopped by a male and female officer.

Sgt. Melissa Eger:

On September 21, 2006, Sergeant Melissa Eger was formally interviewed at the CCRB (enc. 9 B) and did not have any memo book entries regarding this incident (enc. 8 B).

On May 10, 2006, Sergeant Melissa Eger was supervising the burglary apprehension team and was partnered with P. O. Anthony Barbee. At approximately 12:15 P.M., in the vicinity of Washington Avenue and Gates Avenue in Brooklyn, Sgt. Eger and P. O. Barbee observed § 87(2)(b) whose activities appeared suspicious. § 87(2)(b) was looking into the windows of a building and every time someone exited the building, § 87(2)(b) would look inside of the building, but not enter it.

Sergeant Eger and P. O. Barbee approached § 87(2)(b) and asked him what he was doing at the location. Sergeant Eger recalled that § 87(2)(b) said that he lived in the area, however, during her formal interview she was uncertain as to the precise wording and details of § 87(2)(b)'s response. § 87(2)(b)'s answer was satisfactory and P. O. Barbee prepared a Stop Question and Frisk report for the incident. According to Sergeant Eger, neither she nor P. O. Barbee frisked § 87(2)(b).

During Sgt. Eger's formal interview, she was informed that § 87(2)(b) alleged that on an unknown date an officer stopped § 87(2)(b) and instructed § 87(2)(b) to do 80 push ups. Sergeant Eger was asked whether she had any knowledge of this incident. Sgt. Eger denied that she had previous interactions with § 87(2)(b) and denied knowledge of the prior incident. Sgt. Eger also denied that during the May 10, 2006 incident, P. O. Barbee told her "this is the guy I stopped before."

P. O. Anthony Barbee

P. O. Anthony Barbee completed Stop Question & Frisk Report § 87(2)(b) with regards to a two minute stop of § 87(2)(b) on May 10, 2006, at approximately 12:15 P.M., in the vicinity of Washington Avenue and Gates Avenue in Brooklyn (enc. 11 A). P. O. Barbee indicated on the report that § 87(2)(b) had a calm demeanor and was not frisked. P. O. Barbee also indicated that the circumstances leading to the stop of § 87(2)(b) were, "actions indicative of casing victim or location." P. O. Barbee further indicated that the area, "has a high incidence of reported offense." Sgt. Eger is listed as reviewing the report.

On November 2, 2006, P. O. Anthony Barbee was interviewed at the CCRB (enc. 12 B) and had no memo book entries regarding this incident (enc. 10 B).

On May 10, 2006, at 12:15 P.M., in the vicinity of Clinton Avenue in Brooklyn, P. O. Anthony Barbee was assigned to the burglary apprehension team. P. O. Barbee did not recall with whom he was working. While on patrol, P. O. Barbee and his partner, who the investigation determined to be Sgt. Melissa Eger, observed § 87(2)(b) looking around back and forth by a building. P. O. Barbee explained, "Our duties is to look for suspicious people looking in and out of windows. He § 87(2)(b) was standing by a window inside a locked fence and that's what brought us over to approach him and ask him questions."

P. O. Barbee described the building as a residential apartment building with multiple apartments inside. There was a fenced in area similar to a front yard and the building was recessed from the street. The three foot fence enclosed a small area around the front door.

P. O. Barbee asked § 87(2)(b) what he was doing. § 87(2)(b) informed the officers that he worked in the building. § 87(2)(b) also informed the officers that they had stopped him once before, however, P. O. Barbee did not recall the details of that prior incident. Once § 87(2)(b) explained who he was and that he worked in the building, the officers left the location. No frisk was performed during the May 10, 2006 incident.

P. O. Barbee was shown a copy of the Stop, Question, & Frisk report that he completed for the May 10, 2006 incident, which indicated that the area, "Has a high incidence of reported offense." P. O. Barbee explained that within a block or two of the area, there is a high incidence of burglary. P. O. Barbee also explained that § 87(2)(b) was looking inside of windows, which lead P. O. Barbee to indicate on the Stop Question and Frisk Report that § 87(2)(b) was, "casing victim or location."

P. O. Barbee did not recall a previous interaction that he had with § 87(2)(b) and did not recall if he searched § 87(2)(b) prior to the May 10, 2006 incident. P. O. Barbee further stated that it was possible that he had previously interacted with § 87(2)(b) before May 10, 2006, but he could not recall interacting with § 87(2)(b) prior to the May 10, 2006 incident. P. O. Barbee denied that he ever made § 87(2)(b) do eighty push ups. P. O. Barbee further denied that § 87(2)(b) was made to do pushups while an officer waved a bag of marijuana in § 87(2)(b)'s face. P. O. Barbee denied that he was ever involved in an incident, "when something like that happened."

Officer History:

Sgt. Melissa Eger has been a member of service for seven years and has no substantiated CCRB complaints (3 A).

Civilian History:

§ 87(2)(b) has no previous CCRB complaints [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Disputed and Undisputed Facts:

It is not disputed that on May 10, 2006, at approximately 12:15 P.M., in the vicinity of Washington Avenue and Gates Avenue in Brooklyn, P. O. Anthony Barbee and Sgt. Melissa Eger stopped § 87(2)(b) and questioned § 87(2)(b) with regards to what he was doing at the location. § 87(2)(g)

Analyses of Credibility:

No civilian witnesses could be located to verify the statements of § 87(2)(b) or the statements of P. O. Anthony Barbee and Sgt. Melissa Eger. § 87(2)(g)

§ 87(2)(g) § 87(2)(b) could not provide a date when P. O. Barbee allegedly instructed § 87(2)(b) to do eighty pushups and waved a bag of marijuana in his face. § 87(2)(b) did not file a complaint with regards to that incident, which occurred, “when it was still cold,” until he complained about the May 10, 2006 incident. § 87(2)(g)

§ 87(2)(b) provided his intake statement to the CCRB the same day that incident occurred. § 87(2)(g)

Sgt. Melissa Eger and P. O. Anthony Barbee were consistent that they observed § 87(2)(b) looking inside of windows at a burglary prone location, which indicated that § 87(2)(b) was casing the location. Once § 87(2)(b) sufficiently explained to the officers that he worked in the building, the officers left the location. § 87(2)(g)

With regards to the previous police interaction with § 87(2)(b) P. O. Barbee stated during his formal interview that § 87(2)(b) made reference to a previous stop during the May 10, 2006 incident, but P. O. Barbee had no recollection of that incident. While P. O. Barbee stated that it was possible that he had previously interacted with § 87(2)(b) P. O. Barbee denied ever being involved with an incident during which an individual was instructed to do eighty pushups while an officer waved a bag of marijuana in his face. § 87(2)(g)

Allegation A - Sgt. Melissa Eger stopped and questioned § 87(2)(b)

Sgt. Eger and P. O. Barbee admitted during their formal statements that they stopped and questioned § 87(2)(b) and this is corroborated by the Stop Question and Frisk report that was generated with regards to this incident. Sgt. Melissa Eger was P. O. Anthony Barbee’s supervisor § 87(2)(g)

The April 2006 edition of *Kamens’ New York Search and Seizure Law* explains that criminal law, “allows a police officer to stop a person in a public place, ‘when he reasonably suspects that such a person is committing, has committed, or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law. Upon stopping the person, the officer ‘may demand of him his name, address and an explanation of his conduct (enc. 2 A).’ *Kamens’ New York Search and Seizure Law* further elucidates that “To support this suspicion, an officer must indicate specific and articulable facts that reasonably prompted the stop (enc. 2 B),” and that, “Under certain circumstances, courts will find that a police officer had a reasonable suspicion based in part on the defendant’s furtive, evasive, strange, or suspicious behavior.”

§ 87(2)(g) [Redacted]
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Supervisor:	Date:
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